

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
adoption of New Rules I)	ADOPTION
through III relating to the)	
cherry research and marketing)	NO PUBLIC HEARING
development program)	CONTEMPLATED

TO: All Concerned Persons

1. On June 25, 2005, the Montana Department of Agriculture proposes to adopt new rules I through III relating to the cherry research and marketing development program.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on June 9, 2005 to advise us of the nature of the accommodation that you need. Please contact Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I MONTANA CHERRY ADVISORY COMMITTEE (1) The committee shall be a five member committee consisting of individuals actively involved in the cherry industry in either production, research, or marketing of cherries.

(2) A majority of the committee members must be cherry "producers" per 80-11-510(3), MCA. "Producer" is defined in 80-11-503(5), MCA.

(3) On initial appointment by the director of the Montana department of agriculture, one member shall be appointed for a one-year term, two members for a two-year term, and two members for a three-year term at the director's discretion. After the initial term, all members will serve three-year terms with a maximum of three terms allowed.

AUTH: 80-11-504, MCA

IMP: 80-11-510, MCA

NEW RULE II ANNUAL CHERRY COMMODITY ASSESSMENT-COLLECTION (1) Sections 80-11-515 and 80-11-516, MCA, charge the Montana department of agriculture with collecting the commodity assessment.

(2) The assessment shall be one cent per pound on all cherries grown and marketed commercially in Montana by those growers producing and marketing more than 200 pounds annually.

(3) The assessment will be at the time of first sale by a seller and must be collected by the first purchaser of the commodity from the seller at the time of each settlement for the commodity purchased or by invoice from the Montana department of agriculture.

AUTH: 80-11-504, MCA

IMP: 80-11-515 and 80-11-516, MCA

NEW RULE III APPLICATION FOR CHERRY RESEARCH AND MARKETING PROJECT FUNDS (1) Applications for project funding shall be filed with the department on or before January 1. Filing requirements will be satisfied by receipt of the original and 10 copies of each application at the Montana department of agriculture two weeks prior to the first regular advisory committee meeting.

(2) The advisory committee, at the first regular meeting each year, will review research and marketing project applications and make a recommendation to the department as to which projects they would like to fund and the amount of funding suggested. Recommended projects will be determined by amount of funds, type of project, need and whether the project is new or ongoing.

(3) Applicants shall be notified within 30 days after the committee's first annual meeting whether or not their application(s) has been granted and the amount to be funded for each approved project.

(4) The department shall periodically evaluate all outstanding project agreements for adequate and satisfactory financial control, accounting, and performance by project participants.

(5) The department may modify or terminate the funding of any project if a determination is made that the grantee has not complied or cannot comply with a provision of the project agreement. The department shall notify the grantee in writing within 30 days of such determination of the reasons for the determination, and the effective date of the modification or termination.

AUTH: 80-11-504, MCA

IMP: 80-11-511, MCA

REASON: The Montana cherry industry passed by a positive referendum vote to establish a cherry research and market development program. This program, created under 80-11-501 through 80-11-519, MCA, is funded from a portion of the proceeds at the first point of sale of the commodity. These rules are necessary to establish the method by which these funds are collected and expended as well as defining duties of the advisory committee not stated in Montana Code.

It is estimated that this program will impact 75-100 cherry producers in Montana and will raise approximately \$20,000 per year for cherry research and market development.

4. Concerned persons may submit their data, views or arguments concerning the proposed adoption in writing to Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. Any comments must be received no later than June 23, 2005.

5. If persons who are directly affected by the proposed adoption wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Joel Clairmont at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov. A written request for hearing must be received no later than June 23, 2005.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 10 persons based on 100 cherry producers.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed free forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Adoption is available through the Department's website at www.agr.mt.gov, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the

official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

DEPARTMENT OF AGRICULTURE

/s/ Nancy K. Peterson
Nancy K. Peterson, Director

/s/ Timothy J. Meloy
Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State, May 16, 2005.